IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL (L) NO. 14 OF 2004

IN

COMPANY APPLICATIONS NO. 125 OF 2004, 141 OF 2004

AND 214 OF 2004

IN

COMPANY PETITION NO. 7 OF 2002

AND

COMPANY PETITION NO. 43 OF 2002

Anil Kumar Agarwal & Ors. .. Appellants.

vs.

Sunil Kumar Agarwal & Ors. .. Respondents.

Mr. M.S. Doctor with Ameet Hariani & Puja Bakshi i/by Hariani & Co. for appellants.

Mr. T.N. Subramaniam with P. Jaiswal i/by Ramesh Saraogi for R. Nos. 1 & 2.

Mr. S.H. Parikh with Anup Khaitan i/by Anup Khaitan & Co. for R. No. 4.

CORAM : S.U. KAMDAR, ;J.

DATE: 28th JANUARY, 2005

ORAL JUDGMENT :

1. The present appeal is filed under Section 10F of the Companies Act, 1956 challenging two orders passed by the Company Law Board dated 2.7.2004 and 13.9.2004.

2. Some of the material facts of the case are as under :-

3. The Company known as Laxmi Ventures (India) Limited was incorporated sometime in or about 15.1.1980 and prior thereto it was a partnership firm.

4. The main business of the company is manufacturing and packing of cigarettes on a contract basis from two companies, namely, Vazir Sultar Tobacco Ltd., and ITC Ltd.

5. Sometime in or about 2002, a company petition was filed by the respondent nos. 1 to 3 before the Company Law Board, New Delhi under section 397 and 398 of the Companies Act, 1956 (hereinafter referred to as the said Act) inter alia alleging oppression and mismanagement in the company being Company Petition No. 7 of 2002. Thereafter sometime in or about July 2002,

another company petition was filed being Company Petition No. 43 of 2002 before the Company Law Board, New Delhi. It is an admitted position that the daughter of respondent no. 1 namely, Mrs. Neha Agarwal is not a party to the Company Petition No. 2 of 2002 but is party to the Company Petition No. 43 of 2002. On 28.11.2002, both the Company Petitions were listed for hearing before the Company Law Board. In the course of hearing a proposal for settlement was mooted. According to the appellants, at the said hearing, the Company Law Board directed the parties to prepare a chart indicating the share holding pattern of the respondent Sunil Kumar Agarwal group. On 18.12.2002, a chart was produced indicating the said shareholding. However, there were disputes pertaining to the said shareholding pattern indicated by the appellant as the same was not acceptable by the Sunil Kumar Group.

6. On 29.1.2004 when the matter came up for hearing before the Company Law Board once again the parties agreed to settle the disputes and differences and a consensus was arrived at that the matter should be amicably settled. On 29.1.2004, the Company Law Board passed an order setting out the method in which the said disputes between the parties should be settled. In the

said order dated 29.1.2004 the broad guidelines are set out on the basis of which the parties will distribute the assets and liabilities in respect of the companies, family partnership firm, family trusts and other family properties. At the end of the said order dated 29.1.2004, the Company Law Board has observed that a detailed consent terms will be prepared by the parties incorporating the details of the other companies names and firms, trusts, family properties, etc. and that the said consent terms will be entered into after the same is signed by all the parties who are likely to be affected by the said settlement. This order date 29.1.2004 has been admittedly not signed by any of the parties to the present appeal but it has been signed by the Chairman of the Company Law Board. The matter thereafter appeared before the Company Law Board on 12.3.2004 when the Company Law Board passed a further order inter alia pointing out that both the parties should react to the draft consent terms and if there is any difficulty then the same should be placed before the Company Law Board for its resolution.

7. This order dated 29.1.2004 is the centre of controversy by and between the parties. According to the learned counsel for the appellant, the said order dated 29.1.2004

conclusively decided and determined the disputes between the parties which were raised in the Company Petition No. 7 of 2002 and 43 of 2002 before the Company Law Board. According to the learned counsel for the appellants, the said order finally decides the disputes and rights of the parties and the same is an executable order. However, it is an admitted position that consent terms were neither finalised by and between the parties nor they were signed and filed in the proceedings. It is also an admitted position that in the course of negotiations for settlement of the draft consent terms, the respondent no. 1 repudiated the terms of the said order dated 29.1.2004 by contending that the said settlement is not final and the same is not possible to be finalised because of the objections raised by the various persons who are not parties to the proceedings. On 13.2.2004, the Advocate for the appellants drew up a formal draft agreement in terms of the agreed settlement and sent the same to the advocates of respondent no. 1 for finalisation. However, the same was rejected by the respondent herein. Accordingly, on 5.4.2004, the matter again appeared before the Company Law Board and the same was adjourned to 16.4.2004.

8. On 16.4.2004 the appellant herein filed two applications being company application No.

125 of 2004 and company application no. 141 of 2004. The said applications were filed pursuant to the provisions of section 634 A of the said Act which inter alia contemplates an enforcement of the order passed by the Company Law Board. The said provisions provide that the said order of the Company Law Board has to be enforced as if it is a decree made by the Court in a pending suit. This Applications being No. 125 of 2004 and No. 141 of 2004 were thus contested by filing affidavit. By an order dated 20.7.2004, the Company Law Board heard the said application and has inter alia held that the said order dated 29.1.2004 is not an enforceable order under Section 634A of the Companies Act, 1956. This is because according to the Company Law Board the said order can only bind respondent nos. 1, 2 and 3 i.e. the father, mother and the son. It has been stated that the respondent no. 4 who is not a party to the Company Petition No. 7 of 2002 cannot be subjected to the said order dated 29.1.2004 and, therefore, the said order is not binding. However, the Company Law Board has further held that the order dated 29.1.2004 was not a binding executable order because the parties were aware that besides the petitioner and the respondent there were third parties whose interest will be affected by the consent order and thus, the order dated 29.1.2004 itself made

it clear that the detailed consent terms will be required to be incorporated and filed on the basis of the broad agreement recorded in the order dated 29.1.2004. Once it is clear that the third parties are not willing to be parties to the said consent terms and/or settlement by and between the parties then it is not possible to execute the order dated 29.1.2004 which is inchoate and incomplete agreement by and between the parties.

9. This order dated 20.7.2004 was thereafter sought to be reviewed by the appellant by filing an application for review being Company Application No. 214 of 2004 which was heard and an order dated 13.9.2004 has been passed. By the said application for review / recall of the order passed on the Company Application No. 214 of 2004 it has been inter alia contended by the appellant that Ms. Neha Agarwal who was respondent no. 4 though was not a party to the Company Petition No. 7 of 2002, she was a party to the Company Petition No. 43 of 2002 and in view of the fact that both the petitions being Company Petition No. 7 of 2002 and Company Petition No. 43 of 2002 were heard simultaneously on 29.1.2004 and that the Advocate was common representing both the parties, the order of 29.1.2004 would equally bind Ms. Neha

Agarwal and, therefore, the finding of the Company Law Board that she is not bound by the settlement is erroneous and the same is liable to be set aside and/or recalled. By the said order dated 13.9.2004, the Company Law Board has found no substance in the arguments advanced by the appellant. It has been further held that the order dated 29.1.2004 cannot bind the parties because in the present case the appellant not only covered the assets and interest of the share holders of the company which is the subject matter of the proceedings but also covered the interest of the petitioners in other family firms and trusts in which other parties are also associated and those firms and trusts are not before the Court and, therefore, the order dated 29.1.2004 cannot be enforced as if it is final, binding and concluded settlement affecting the rights of not only of the parties to the said proceedings but even those who are not the parties thereto. It is these two orders dated 29.1.2004 and 13.9.2004 are subject matter of challenge by filing the present appeal under Section 10F of the said Act.

10. The learned counsel appearing for the appellant has vehemently contended that the order dated 29.1.2004 is legal, valid, binding and enforceable order under Section 634 A of the said

act and the Company Law Board ought to have executed the same as if it is the decree of the Court in a suit. It has been therefore, contended that the Company Law Board has failed to exercise its jurisdiction under Section 634 A of the said Act and, therefore, the orders passed by the Company Law Board are required to be quashed and set aside and the order dated 29.1.2004 should be permitted to be enforced and executed. The learned counsel for the appellant in support of the aforesaid contention has contended that the finding of the Company Law Board that respondent no. 4 was not party to the order dated 29.1.2004 is erroneous and baseless for the simple reason that respondent no. 4 Ms. Neha Agarwal was party to the Company Petition No. 43 of 2002 and was very much before the Company Law Board when the final order was passed on 29.1.2004. Additionally, it has been also contended by the learned counsel for the appellant that Ms. Neha Agarwal being the signatory to the affidavit in support of the Company Petition was very much a party to the said company petitions which were decided by the Company Law Board on 29.1.2004. It has also been contended that in so far as other third parties are concerned, the same being belonging to Sunil Kumar Agarwal Group - respondent no. 3 herein, though they were not present they were also bound

by the order dated 29.1.2004. In any event, it has been submitted by the learned counsel for the appellant that those third parties are formal parties and, their rights are not substantially affected even if the order dated 29.1.2004 is executed and/or made executable under Section 634 A of the said Act. In view thereof, it has been contended that the order passed by the Company Law Board is erroneous and without any merit. Further, it has been contended by the learned counsel for the appellant that the order of the Company Law Board holding that the order dated 29.1.2004 even does not bind the respondent nos. 2 and 3 who are mother and the son is also equally erroneous because they were parties to the said proceedings and once they are parties to the said proceedings, the order passed therein must necessarily bind the said respondent nos. 2 and 3 as well. It is contended that the finding of the Company Law Board that the petitioner has no authority for and on behalf of respondent nos. 2, 3 and 4 to bind them is erroneous. The order dated 13.9.2004 is also challenged by the appellant by inter alia contending that the finding is erroneous in law in as much as the petitioner has always represented all the persons in his Group including respondent nos. 2, 3 and 4 and furthermore that the Advocate appearing was not merely appearing for respondent no. 1 but

was also appearing for respondent nos. 2, 3 and 4 and, therefore, the agreement accepted by the said Advocate representing the parties binds each of the said parties. It has been further contended by the learned counsel for the appellant that the order passed by the Company Law Board dated 29.1.2004 is erroneous and bad in law and, therefore, requires to be quashed and set aside. It has been contended by the learned counsel for the appellants that the law is well settled that the Court must support the settlement and seek to enforce the same as far as possible rather than permit the parties to wriggle out from the agreement. It has been further contended that the aim and object of the Court must be to bring the resolution of the dispute as quickly as possible and not to linger the same and, therefore, with the same aim and object the Company Law Board ought to have enforced the order dated 29.1.2004 and ought not to have permitted the respondents to back out therefrom.

11. On the other hand, the learned counsel for the respondent has contended that the order dated 29.1.2004 is not a valid executable order and, therefore, the application made for execution thereof under Section 634 A of the said Act was erroneous and misconceived and not

maintainable. It has ben contended by the learned counsel for the respondent that a plain reading of the order dated 29.1.2004 itself makes it clear that the order is not complete by itself and it does not conclude the disputes between the parties finally and it was a mere broad guidelines which were drawn up at that stage. According to the learned counsel for the respondent, the order itself makes it clear that it is not concluded, final and binding order because the said order at the foot of it incorporates as under :-

> "On the basis of the above agreement, the parties will prepare a detailed consent terms incorporating therein the names of firms companies trust, family properties etc. to be signed by all the parties who will be affected by this Settlement. The petitioner will relinquish all his rights and interests in all the companies, firms, partnership, trusts, assets and businesses.
>
> The petitioner will enjoy absolute right in the business of Bhillai and Tredsra Unit including the license in respect of these units."

The learned counsel has further contended that the said fact is further supported by a further order passed by the Company Law Board on 12.3.2004 which reads as under :-

> The counsel for the petitioner will react to the draft order given by the respondent incorporating therein the terms agreed by them before me by 25.3.2004. If there is any difficulty he will put the same in an affidavit with a copy to the respondents by the same date. In the meanwhile neither of the parties will deal with the asset of the company/all family companies/firm in any manner as the Compromise is on a global basis. Adjourned to 5th April at 2.30 p.m."

According to the learned counsel for the respondent what was sought to be done on 29.1.2004 was an attempt to resolve the dispute by and between the parties. In view of the fact that all the parties were not before the Company Law Board on 29.1.2004, it was agreed that though the broad frame work was arrived at the parties will enter into final consent terms incorporating the rights of all the parties in the consent terms which will be drawn up subsequently.

However, in view of the fact that other parties who were not present on 29.1.2004 were not agreeable to the said broad frame work arrived at by the respondent no. 1 the said settlement could not be worked out as final and concluded settlement and, therefore, the said order is not conclusive order which can be executed as if it is a decree in the suit. It has been further contended by the learned counsel for the respondent that the order dated 29.1.2004 is not an executable order. It is only in the form of a broad proposal which was required to be further worked out in its details between the parties particularly in respect of distribution of the assets and properties of the companies, firms and family properties and the trusts. It has been contended by the learned counsel for the respondent company that the Company Law Board was right and justified in holding that the said settlement incorporated in order dated 29.1.2004 is not a binding and valid settlement which can be executed or enforced under Section 634 A of the Companies Act. It has been further contended by the learned counsel for the respondents that the finding of the Company Law Board that the parties who are likely to be affected being not present before the Court, the same cannot be taken into consideration as their rights cannot be affected without their consent or without they

being heard is valid and justified. The learned counsel for the respondent has further contended that even if the provisions of order 23 rule 3 of the Civil Procedure Code are invoked, though the same are not strictly applicable to the company proceedings, still no order can be passed by the Company Law Board or any Court in as much as there is no consent of all the parties to the said proceedings and/or the parties which are likely to be affected by the said settlement. According to the learned counsel for the respondent it is settled law that the Court does not affect the rights detrimental to the interest of such persons without such persons being heard or the consent of such persons is obtained. On the aforesaid basic principle the learned counsel for the respondent has contended that the said order the Company Law Board dated 20.7.2004 and 13.9.2004 are legal, valid and binding. Alternatively, the learned counsel for the respondent has contended that the finding of facts recorded by the Company Law Board that the said order is not valid, binding and is not executable cannot be disturbed by this Court in its limited jurisdiction under section 10F of the said Act. A further contention is raised by the learned counsel for the respondent is that the jurisdiction of the Company Law Board to determine the issues is limited as contemplated

under Section 10 E of the said Act and the partnership firms and the private trusts and personal properties of individuals does not come within the scope and jurisdiction of the Company Law Board under Section 10E and, therefore the Company Law Board could not have passed the order dated 29.1.2004 affecting such issues and properties which are not within its jurisdiction to be determined under Section 10 E of the said Act. The learned counsel for the respondent has contended that if the order dated 29.1.2004 is taken as a legal, valid and binding order then obviously by virtue of the provisions of Section 10 E of the Act, the said order is without jurisdiction and thus unenforceable in law and, therefore, also an application made under section 634 A of the Companies Act was misconceived and not maintainable and was liable to be rejected and has been rightly rejected by the Company Law Board.

12. The learned counsel for the appellant has in support of his defence has relied upon two judgments, namely, the judgment of the Madras High Court in the case of Kuki Leather Pvt. Ltd., and others vs. T.N.K. Govindaraju Chettiar and Co. and Another, reported in 2002 Company Cases Vol. 110 pages 474, particularly paragraph on page 480 which reads as under :-

" The argument that the agreement would not bind as it was not signed by the parties presumes that Order 23, rule 3 of the Code of Civil Procedure in all its rigour, applies to proceedings before the Company Law Board. While it is no doubt true that the safeguards in-built into this provision are meant to promote justice and to minimise possible challenges to the compromise recorded by the court, that provision cannot be read as laying down the only possible way in which the settlement agreed to between the parties should be recorded by the Company Law Board. It is not in dispute that Order 23, rule 3 of the Code of Civil Procedure does not in terms apply to the proceedings before the Company law Board. It is not the case of the appellants that the Board had wrongly recorded what it did record. The appellants had no grievance at all against the record made on that date and do not have any grievance even now with regard to its accuracy and authenticity. There is, therefore, no difficulty in proceeding on the basis that the order did record an agreement which the parties

had voluntarily reached and that the parties had undertaken to preform the obligations which they were required to perform as recorded in that order. The fact that the agreement was not signed by the parties in this background does not in any manner vitiate that order as embodying a compromise properly arrived at between the parties and which was capable of being made into a decree which was executable."

13. The next judgment relied upon by the learned counsel for the appellant is in the case of Consulting Engineers Services (India) Ltd. v. Kaikhosrou K. Framji reported in (2002) 4 Comp LJ 227 (Del), particularly paragraphs 9 and 10 which read as under :-

"9. A bare perusal of section 634A of the Act clearly shows that the plea of Mr. Chaudhary regarding the narrow interpretation sought to be given to words ’any order’ cannot be countenanced as the phrase ’any order’ must be given its full natural meaning and effect and consequently, will clearly include the order passed on 28 May, 1998. Further,

the stipulation in the section that the order can be enforced by the Board in the manner similar to a decree - is a clear pointer to the fact that said order could not be a decree as sought to be contended by section 634A is construed to be a decree, the words 'in the same manner as if it was a decree' are totally redundant and superfluous and the court cannot construe the mandate of the statute to hold that the legislature intended to use superfluous words.

10. In this view of the matter, I am satisfied that the order dated 28 May, 1998, was an order contemplated by section 634A and can be enforced by the Board as sought to be done by the order dated 23 January, 2002. Furthermore, there is no merit in the plea of the learned counsel for the appellant that the order dated 28 May, 1998, was a facilitatory one and not a final settlement. The only factor which was to be considered after the settlement of 28 May, 1998, was about the valuation of the shares to be done eventually by the Company Law Board. On this plea I respectfully agree with the view of the

Madras High Court in Kulki Leather' case where the Division Bench in Kuki Leather (P) Ltd., v. T.N.K. Govindaraju Chettiar & Co. (Letters Patent Appeal No. 123/2001, dated 28.8.2001)(since reported as (2002) 4 Comp LJ 208 (Mad)] held as follows :

" .. The submission that the Board had no jurisdiction at all to make the kind of order that was made on that date is also a submission which is required to be rejected. Counsel rightly does not dispute that the Company Law Board can direct the purchase of shares in proceedings under sections 397 and 398 of the Companies Act. While the proceedings that were initiated was one under section 235, that fact by itself is not to be regarded as placing an embargo on orders other than that warranted under section 235 being made, if parties to the proceedings agree to such an order, and such agreement is not against public policy, is not illegal and is not violative of any of the provisions of the Companies Act or any other law, and it is not an agreement which itself is beyond the competence of the Board to record under the provisions of the Companies Act. It is not the case of the appellants that the proceedings recorded on 22 January, 1999, are against public policy or illegal or is an agreement which the Company Law Board is prohibited from recording under any of the provisions of the Companies Act or under any other law. The submission that the order is vitiated by reason of total lack of jurisdiction in the Company Law Board, therefore, cannot be accepted."

In paragraph 19, the court has observed:

"We must strongly deprecate the attempt of the appellants to avoid carrying out a solemn promise made through their responsible counsel to the Company Law Board by seeking to raise hyper-technical pleas when faced with the demand for

> compliance with the terms of that order. Although we have considered the submission made by counsel and examined those submissions, we make it clear that the appellants are not entitled in law to urge any of those grounds, as allowing the appellants to do so successfully would mean closing eyes by the court to a fraud played by a party and counsel on the Company Law Board. As stated by us earlier, no counsel or litigant has a right to play fraud on the court or the Tribunal and any attempt to do so must be discouraged and should invite the heaviest penalties."

14. The learned counsel has thereafter relied upon a judgment of this Court in the case of Venkatrao A. Pai and Sons Ltd., vs. Narayanlal Bansilal and others, reported in AIR 1961 Bom 94 inter alia in support of the proposition that if there are more than one petitioners then only one advocate can represent them and each petitioner cannot be represented by separate advocates.

15. Thereafter the learned counsel appearing for the appellant has relied upon the judgment of the Apex Court in the case of Salkia Businessmen’s Association and others. vs. Howrah Municipal Corporation and others, reported in AIR 2001 SC 2790 in which it is inter alia held that the Court must support the settlement between the parties and honour the same and implement their own orders and encourage parties to the litigation to abide by the terms agreed upon by themselves and should not permit the

parties to wriggle out of the settlement arrived at between them.

16. After considering the arguments of both the parties, I am of the opinion that the order dated 29.1.2004 passed by the Company Law Board is not an executable and/or enforceable order under Section 634 A of the said Act. The said order dated 29.1.2004 is neither a complete order nor it has been signed by all the parties who are likely to be affected by such a settlement. The order dated 29.1.2004 in fact lays down a broad terms on the basis of which the settlement can be executed and final settlement can be arrived at. It is an admitted position that the order dated 29.1.2004 does not dispose of either of the Company petitions No. 7 of 2002 or 43 of 2002 both these petitions are kept pending by the Company Law Board being conscious of the fact that the order dated 29.1.2004 is not final and/or finally decides the dispute yet it is only a mere guidelines for the purpose of arriving at a settlement. If the order dated 29.1.2004 would have been final and binding on the parties, then the Company Law Board would have disposed of both the petitions in terms of the said order dated 29.1.2004. On the contrary, the order dated 29.1.2004 inter alia contemplates a further drawing up of consent terms by and between the

parties providing for various issues and assets and liabilities of various partnerships, firms, private trusts and other family properties. It further provides for consent of the various parties who are likely to be affected by the consent terms and that only after the said consent terms are drawn up in consultation by and between the parties that the said final settlement was required to be arrived at deciding the disputes between the parties finally. Admittedly, no such settlement has been arrived at by and between the parties as yet. Once it is so, then, it cannot be said that the order dated 29.1.2004 is final and binding on the parties which can be enforced by relying upon the provisions of Section 634 A of the said Act. It is a settled law that a settlement of the dispute between the parties must be the conscious, legal and valid settlement between the parties. The parties must consent to any such settlement. Admittedly, apart from the partnership firms and private trusts, there are other parties involved. None of the said parties are either parties to the proceedings nor are present before the Company Law Board nor represented through any of the advocates before the Company Law Board. In the said background, it is impossible for me to hold that the order dated 29.1.2004 is final and binding upon the parties even though they are not

before the Company Law Board nor are they represented by any advocate before the Company Law Board. The contention of the appellant that they are formal parties or their rights are not affected and, therefore, though they are not present before the Company Law Board still the said order dated 29.1.204 binds them. I am not inclined to accept the aforesaid contention. Once the third parties have an interest in the said partnership firm then reconstitution of the partnership firm by reason of same being binding or adding them or by ascertaining the shares of the partners in the partnership firms cannot be done without consent of all the partners of other partnership firms. Admittedly, there are third parties in the said partnership firms. Thus, the contention of the learned counsel for the appellant that the reconstitution of the partnership firms would not affect them but they may be benefited by acceleration of their shares on receipt of higher percentage of share of profit and, therefore, they should not be consulted at all nor they need to be a party to the Company Law Board proceedings, in my view, it is not a legal, valid argument which can be accepted by the Court. The person who is a beneficiary or a partner and the consent terms admittedly affects his right then he should be a party to the consent terms and it cannot be

contended that because he is merely a beneficiary, there is no need for the person to be a party in the said consent terms. Apart therefrom, I am not even inclined to accept the argument of the appellant that the third party share in the partnership firms would be enhanced and, therefore, they are not affected. Possibly under the Deed of Partnership, with the enhancement of the share the liabilities also could be equally enhanced. If that is so, they are necessary and proper parties who should have been present before the Company Law Board before any order affecting their right is passed which can be made executable and final order. In my opinion, the order of 29.1.2004 itself on its own reading indicates that the same is only a broad guidelines and is not a final and binding order. Apart therefrom the order dated 12.3.2004 which has been reproduced hereinabove, makes it further clear that the matter is not finally concluded and, therefore, the order dated 29.1.2004 is not a final order but in the form of guidelines for preparing consent terms which were required to be drawn up for the purpose of disposing of the said petitions settling the disputes finally between the parties. In the light of the order dated 12.3.2004, it is not possible for me to accept that the order dated 29.1.2004 has conclusively decided the rights between the parties and thus,

the said order is not an executable order under section 634A of the said Act. I am of the opinion that the order dated 29.1.2004 is inchoate and incomplete order. It is merely a broad guidelines and various steps were required to be taken in pursuance thereof in order to arrive at a final and binding settlement between the parties. In so far as the reliance placed by the learned counsel for the appellant on the aforesaid two judgments of the Madras High Court and Delhi High court is concerned, I am of the opinion that the same is misconceived and have no merit whatsoever. In both the judgments the proceedings were conclusively and finally decided between the parties by a binding settlement. The proceedings were disposed of in both the cases and they were not pending proceedings once the issue was finally decided by the Company Law Board. Subsequently an issue was raised that some of the parties have not signed the consent terms and, therefore, the same was not binding. While passing the order which was a final order, it was stipulated as under :

> " In view of this agreement between the parties the petition is disposed of without any order. Liberty to apply."

17. In the Delhi High Court proceedings also

the matter was also finally disposed of except the issue as to its method of valuation of share was kept open. In the said judgment of Delhi High Court, the operative part of the order which was passed while accepting the settlement is as under :-

> "In accordance with the above agreed terms and in order to facilitate the parties to come to a final settlement, we adjourn the case to 5.8.1998 at 4.00 p.m.. When the parties can make their submissions as per clause 4 above."

18. In view of the aforesaid position, in my view, the judgment of the Madras High Court and Delhi High Court do not apply to the facts of the present case. In he present case, the order dated 29.1.2004 on the contrary keeps the issue open by providing that the draft consent terms should be exchanged between the parties and the details to be worked out and only merely lays down the broad guidelines of settlement of disputes between the parties. In light of the aforesaid decision, I am of the opinion that the order dated 29.1.2004 is not an executable order. Apart therefrom, I also find considerable merit

in the contention raised by the learned counsel for the respondent that the jurisdiction of the Company Law Board is invoked by virtue of the provisions of section 10E of the said Act. The provisions of Section 10 E (1A) specify the power of the Company Law Board which reads as under :-

> "(1A) The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it before the commencement of the Companies (Second Amendment) Act, 2002 by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it before the commencement of the Companies (Second Amendment) Act, 2002 by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law."

Thus, it is clear that the power of the Company Law Board pertains only n respect of the companies which are covered by the Companies Act, 1956 and it does not extend to the private firms, private trusts and other family properties. To

extend such power it is imperative on the Company Law Board to at least have consent of the parties who are likely to be affected by virtue of such settlement which has been proposed and/or to be arrived at as contemplated under order 29.1.2004. Admittedly, there is no such consent from third parties namely, the various partners of the partnership firms and other trustees and beneficiaries of the private trusts and also the co-owners of the family properties. In view thereof, I am of the opinion that the orders which were passed by the Company Law Board on 20.7.2004 and 13.9.2004 are legal and valid orders and does not require any interference from this Court in the present appeal preferred under Section 10 F of the said Act. I, therefore, dismissed both the appeals. However, there shall be no order as to costs.